

Message Text

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C O N F I D E N T I A L STATE 170309

E.O. 11652: GDS

TAGS: PFOR, NATO, ICRC, PARM

SUBJECT: INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICT.
PROPOSED NATO CONSULTATIONS

REF: USNATO 3775

1. WITH RESPECT TO NEW DRAFT ARTICLE 46 STUDY REQUEST WHICH REFTEL REPORTS THAT FRG PLANS TO CIRCULATE, CANADIANS TELL US THEY UNDERSTAND NEW DRAFT IS TO BE DISCUSSED IN POLADS ON JULY 22. THIS MAY BE MISUNDERSTANDING, BUT, IF TRUE, REQUEST MISSION REMIND FRG REP THAT U.S. EXPERTS PLAN TO DISCUSS THIS MATTER WITH FRG IN BONN ON AUGUST 8 AND THAT FURTHER CONSIDERATIONS IN POLADS BEFORE THEN WOULD BE PREMATURE.

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2. FULL TEXT OF ARTICLE 46 AS ADOPTED BY COMMITTEE IN THE

CONFERENCE READS AS FOLLOWS:

ARTICLE 46 - PROTECTION OF THE CIVILIAN POPULATION

THE CIVILIAN POPULATION AND INDIVIDUAL CIVILIANS SHALL ENJOY GENERAL PROTECTION AGAINST DANGERS ARISING FROM MILITARY OPERATIONS. TO GIVE EFFECT TO THIS PROTECTION, THE FOLLOWING RULES, IN ADDITION TO OTHER APPLICABLE RULES

OF INTERNATIONAL LAW, SHALL BE OBSERVED IN ALL CIRCUMSTANCES:

1. THE CIVILIAN POPULATION AS SUCH, AS WELL AS INDIVIDUAL CIVILIANS, SHALL NOT BE MADE THE OBJECT OF ATTACK. ACTS OR THREATS OF VIOLENCE WHICH HAVE THE PRIMARY OBJECT OF SPREADING TERROR AMONG THE CIVILIAN POPULATION ARE PROHIBITED.
2. CIVILIANS SHALL ENJOY THE PROTECTION AFFORDED BY THIS SECTION OF THE PROTOCOL UNLESS AND FOR SUCH TIME AS THEY TAKE A DIRECT PART IN HOSTILITIES.
3. INDISCRIMINATE ATTACKS ARE PROHIBITED. INDISCRIMINATE ATTACKS ARE THOSE WHICH ARE NOT DIRECTED AT A SPECIFIC MILITARY OBJECTIVE; OR THOSE WHICH EMPLOY A METHOD OR MEANS OF COMBAT WHICH CANNOT BE DIRECTED AT A SPECIFIC MILITARY OBJECTIVE, OR THE EFFECTS OF WHICH CANNOT BE LIMITED AS REQUIRED BY THIS PROTOCOL, AND CONSEQUENTLY ARE OF A NATURE TO STRIKE MILITARY OBJECTIVES AND CIVILIANS OR CIVILIAN OBJECTS WITHOUT DISTINCTION. AMONG OTHERS, THE FOLLOWING TYPES OF ATTACKS ARE TO BE CONSIDERED AS INDISCRIMINATE:

(A) AN ATTACK BY BOMBARDMENT BY ANY METHODS OR MEANS WHICH TREATS AS A SINGLE MILITARY OBJECTIVE A NUMBER OF CLEARLY SEPARATED AND DISTINCT MILITARY OBJECTIVES LOCATED IN A CITY, TOWN, VILLAGE, OR OTHER AREA CONTAINING A CONCENTRATION OF CIVILIANS OR CIVILIAN OBJECTS; AND

(B) AN ATTACK OF THE TYPE PROHIBITED BY ARTICLE 50(2)(A)
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(III) (RULE OF PROPORTIONALITY)

4. ATTACKS AGAINST THE CIVILIAN POPULATION OR CIVILIANS BY WAY OF REPRISALS ARE PROHIBITED.
5. THE PRESENCE OR MOVEMENTS OF THE CIVILIAN POPULATION OR INDIVIDUAL CIVILIANS SHALL NOT BE USED TO RENDER CERTAIN POINTS OR AREAS IMMUNE FROM MILITARY OPERATIONS, IN

PARTICULAR IN ATTEMPTS TO SHIELD MILITARY OBJECTIVES FROM
ATTACKS, OR TO SHIELD, FAVOUR OR IMPEDE MILITARY
OPERATIONS. PARTIES TO A CONFLICT ALSO SHALL NOT DIRECT
THE MOVEMENT OF THE CIVILIAN POPULATION OR INDIVIDUAL
CIVILIANS IN ATTEMPTS TO SHIELD MILITARY OBJECTIVES FROM
ATTACK OR TO SHIELD MILITARY OPERATIONS.

6. ANY VIOLATIONS OF THESE PROHIBITIONS SHALL NOT RELEASE
THE PARTIES TO THE CONFLICT FROM THEIR LEGAL OBLIGATIONS

WITH RESPECT TO THOSE CIVILIANS, INCLUDING THE PRE-
CAUTIONARY MEASURES PROVIDED FOR IN THE ARTICLE 50."

3. TEXT OF USDEL REPORT, INCLUDING TEXTS OF ADOPTED
ARTICLES, BEING POUCHED. KISSINGER

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